

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

F.A.Y. PROPERTIES, INC.,  
an Illinois corporation,

Plaintiff,

vs.

R.J. REYNOLDS SMOKE SHOP, Inc. a  
Delaware Corporation, of itself and doing  
business as MARSHALL MCGEARTY  
TOBACCO ARTISANS; and R.J.  
REYNOLDS TOBACCO COMPANY, a  
North Carolina Corporation,

Defendants.

Case No. 07 C 7045

**DEFENDANTS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO  
ANSWER COMPLAINT OR OTHERWISE PLEAD**

Defendants R.J. Reynolds Smoke Shop, Inc., of itself and doing business as Marshall McGearty Tobacco Artisans; and R.J. Reynolds Tobacco Company, (collectively "R.J. Reynolds"), by and through their attorneys, move this Court pursuant to Federal Rule of Civil Procedure 6(b) for an order extending the deadline to answer plaintiff's complaint or otherwise plead until February 14, 2008, or in the alternative an order extending time to answer plaintiff's complaint or otherwise plead by fourteen (14) days. In support of this Motion, defendants state as follows:

1. This action was commenced with the filing of Plaintiff's two-count complaint on December 14, 2007 with this Court.

2. On December 20, 2007, defendants received a letter requesting waiver of service and enclosing forms for waiver of service and copies of the complaint.

3. On January 14, 2008, pursuant to Fed. R. Civ. P. Rule 4(d), counsel for defendants wrote to counsel for plaintiff agreeing to waive service of summons and enclosed the

waiver of service of summons for both R.J. Reynolds Smoke Shop, Inc. and R.J. Reynolds Tobacco Company. Pursuant to the waiver of service of summons, defendants had sixty (60) days from December 14, 2007 to answer plaintiff's complaint or otherwise respond.

4. Defendants inadvertently miscalculated that the 60-day deadline from December 14, 2007 gave defendants until February 14, 2008 to respond to plaintiff's complaint while the actual 60-day deadline was February 12, 2008. Pursuant to their miscalculation, defendants in good faith filed their answer and affirmative defenses to plaintiff's complaint and defendants/counterplaintiffs' counterclaim on February 14, 2007.

5. Defendants became aware on Friday February 15, 2008, that their good faith belief that their answer was due on February 14, 2008, was mistaken and, as a consequence, defendants inadvertently filed their answer sixty-two days (62) after December 12, 2007 -- making their pleading untimely by two days. Defendants' inadvertent and mistaken belief that the sixty-day deadline to file their answer ended on February 14, 2008 was made in good faith. Defendants' two-day miscalculation of the 60-day deadline is reasonable and constitutes excusable neglect.

6. This motion is unopposed by plaintiff and does not prejudice plaintiff.

7. This Court has the authority to enlarge the time given to defendants to answer the complaint or otherwise plead pursuant to Fed. R. Civ. P. 6(b)(2).

8. The determination of whether defendants' inadvertent two-day miscalculation constitutes excusable neglect rests within the sound discretion of this Court. *Mars Steel Corp. v. Continental Illinois National Bank and Trust Company of Chicago*, 120 F.R.D. 51, 52 (N.D.Ill. 1988). Courts have generally recognized that excusable neglect may extend to inadvertent

delays. *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 391-392 (1993).

9. Defendants respectfully request this Court for an enlargement of time extending the deadline to answer plaintiff's complaint or otherwise plead until February 14, 2008, making defendants' answer timely. In the alternative, defendants respectfully request this Court for an enlargement of time extending time to answer plaintiff's complaint or otherwise plead by fourteen (14) days so defendants can re-file their response in a timely manner.

WHEREFORE, for the foregoing reasons, R.J. Reynolds respectfully moves this Court for an Order Granting its Unopposed Motion for Enlargement of Time to Answer Complaint or Otherwise Plead.

Dated: February 19, 2008

Respectfully submitted,

/s/ Christopher J. Esbrook  
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*Attorney for R.J. REYNOLDS SMOKE SHOP, Inc. a  
Delaware Corporation, of itself and doing business  
as MARSHALL MCGEARTY TOBACCO  
ARTISANS; and R.J. REYNOLDS TOBACCO  
COMPANY, a North Carolina corporation*

**CERTIFICATE OF SERVICE**

The undersigned, one of the attorneys for R.J. Reynolds, R.J. REYNOLDS SMOKE SHOP, Inc. a Delaware Corporation, of itself and doing business as MARSHALL MCGEARTY TOBACCO ARTISANS; and R.J. REYNOLDS TOBACCO COMPANY, a North Carolina corporation certifies that he did cause a true and correct copy of the foregoing Defendants' Unopposed Motion for Enlargement of Time to Answer Complaint or Otherwise Plead to be served by electronic-mail and United States Mail with postage prepaid on February 19, 2008 upon the following:

Thomas E. Baltz  
GREY, GREY & BALTZ, P.C.  
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/s/ Christopher J. Esbrook